

Anthony Wallace appeals the sentence imposed after his plea of guilty to dealing in methamphetamine and resisting law enforcement. He argues the trial court failed to consider mitigating factors supported by the record. The trial court was within its discretion to reject the mitigating factors Wallace offered; we accordingly affirm the length of his sentence.

Wallace also challenges the order he pay restitution, noting his plea agreement does not address restitution. We reverse the restitution order.

FACTS AND PROCEDURAL HISTORY

Wallace was charged with two counts of dealing in methamphetamine as Class A felonies;¹ two counts of possession of methamphetamine as Class C felonies;² and one count of resisting law enforcement as a Class D felony.³ Wallace agreed to plead guilty to one count of dealing in methamphetamine as a Class B felony and one count of resisting law enforcement in exchange for a maximum executed sentence of five years. The State later charged Wallace with an additional count of resisting law enforcement but the agreement as to Wallace's sentence did not change.

The trial court sentenced Wallace to two and a half years on each count of resisting law enforcement, with the terms to be served consecutively. It sentenced Wallace to fifteen years for dealing in methamphetamine. That sentence was

¹ Ind. Code § 35-48-4-1.

² Ind. Code § 35-48-4-6.

³ Ind. Code § 35-44-3-3.

suspended and Wallace was placed on probation for ten years. The trial court found no mitigating factors and four aggravating factors. It also entered a restitution order under which Wallace would pay \$135 to one of the police officers and \$18,994.50 to the City of Indianapolis. The amount of restitution to be paid another officer would be determined by the parties.

DISCUSSION AND DECISION

1. Mitigating Factors

During the sentencing hearing, Wallace offered as evidence of mitigating factors that he had accepted responsibility for his actions by pleading guilty, he is addicted to drugs, and his imprisonment would cause undue hardship to his wife and children. He claims the trial court improperly overlooked these mitigating factors.

Sentencing decisions generally, and the finding of mitigating circumstances in particular, lie within the trial court's sound discretion. *Legue v. State*, 688 N.E.2d 408, 411 (Ind. 1997). The trial court is not required to find mitigating factors and its decisions will be revised only for an abuse of discretion. *O'Neill v. State*, 719 N.E.2d 1243, 1244 (Ind. 1999). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Smith v. State*, 730 N.E.2d 705, 708 (Ind. 2000), *reh'g denied*. The court is not required to find mitigating circumstances, but it may not ignore mitigating circumstances that are significant and clearly supported by the record. *Echols v. State*, 722 N.E.2d 805, 808 (Ind. 2000).

The finding of mitigating circumstances is not mandatory. *Grund v. State*, 671 N.E.2d 411, 418 (Ind. 1996). The trial court considered Wallace's drug addiction an aggravating factor; thus that evidence was not overlooked nor did the trial court determine it was a significant mitigating factor.

Nor was the court obliged to find Wallace's imprisonment would cause an undue hardship to his family. To show undue hardship Wallace had to produce evidence of special circumstances. *See Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999) (no special circumstance where Dowdell was father of one child who was eighteen months old at the time of sentencing and Dowdell had not been ordered to pay support for the child). The fact Wallace's wife has to work two jobs to support their children is not a special circumstance and the trial court is not obliged to find it significant. *See Sayles v. State*, 513 N.E.2d 183, 189 (Ind. Ct. App. 1987) (trial court did not abuse its discretion by failing to find undue hardship on Sayles' dependents as a mitigating circumstance where both of Sayles' children lived with their mother, who worked and supported the children financially), *reh'g denied, trans. denied*.

Finally, the trial court was not required to find Wallace's guilty plea a mitigating factor. The State may extend a benefit to a defendant who pleads guilty and thereby extends a substantial benefit to the State, and who "demonstrates by his plea that he is ready and willing to admit his crime and to enter the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary." *Williams v. State*, 430

N.E.2d 759, 764 (Ind. 1982) (quoting *Brady v. United States*, 397 U.S. 742, 753 (1970), where the Supreme Court addressed whether a guilty plea is “coerced” when a defendant avoids a death sentence by pleading guilty).

But where a defendant receives a significant benefit from his guilty plea, a trial court does not abuse its discretion by declining to identify the plea as a mitigating factor. *See, e.g., Comer v. State*, 839 N.E.2d 721, 729 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 1000 (Ind. 2006). Wallace was charged with two Class A felonies, for each of which he could have received a maximum sentence of fifty years. *See* Ind. Code § 35-50-2-4. Wallace agreed to plead guilty to a lesser offense for which he received an executed sentence of five years and a suspended sentence of fifteen years. As Wallace received a benefit for his guilty plea, the trial court was not obliged to consider it a significant mitigating factor.

2. Restitution

Wallace’s restitution order was improper because his plea agreement did not explicitly address restitution as a condition of Wallace’s probation.

If the trial court accepts a plea agreement, its terms are binding on the parties and the court. *Jackson v. State*, 816 N.E.2d 868, 869 (Ind. Ct. App. 2004). The trial court typically has discretion to order restitution as a condition of probation, Ind. Code § 35-38-2-2.3, but the court may not order restitution when

the plea agreement does not specify that condition. *Disney v. State*, 441 N.E.2d 489, 493 (Ind. Ct. App. 1989).⁴

Wallace's plea agreement did not specify restitution as a term of probation. The only term of probation specified in the plea agreement is the requirement that Wallace submit to and pay for random urinalysis. The trial court accepted the plea agreement and is bound by its terms. The trial court could not order Wallace to pay restitution, as it was not specified in the plea agreement.

CONCLUSION

The trial court did not overlook substantial evidence of mitigating factors. Nor was the trial court required to accept the mitigating factors Wallace offered. Therefore, the trial court did not abuse its discretion in finding no mitigating factors. However, the trial court did err when it ordered restitution in the absence of the plea agreement including that condition. We accordingly affirm in part and reverse in part.

⁴ In *Disney*, we also noted Ind. Code § 35-7-2-1(b) provides "[w]hen a person is placed on probation, he shall be given a written statement of the conditions of his probation." The sentencing court has a "responsibility to specify the terms of probation and to provide the defendant with a *written statement* of such conditions at, and as a part of, the sentencing hearing." 441 N.E.2d at 493 (emphasis supplied).

The State would distinguish *Disney* in that Wallace's "restitution requirement was explicitly stated at the sentencing hearing." (Br. of Appellee at 7.) We decline the State's invitation to ignore the legislature's explicit requirement that the terms of probation be memorialized in a *written statement*.

The State also appears to argue the restitution order was not error because the amount of the restitution (about \$19,000) was "within the range of punishment" (*id.*) to which Wallace could be subject to because "fines and costs were left open." *Id.* Those fines and costs, the State asserts without citation to the record or to authority, might total up to \$30,000. We decline the State's apparent invitation to hold a plea agreement's silence regarding the amount of fines and costs subjects a defendant to an otherwise inappropriate restitution obligation up to the maximum amount of the fines and costs to which he could potentially be subjected.

Affirmed in part, and reversed in part.

BAILEY, J., and RILEY, J., concur.